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September 19, 2024

VIA ELECTRONIC SUBMISSION

Jarrett B. Perlow
Federal Circuit Court Clerk
717 Madison Place, NW
Washington, DC 20439
(202) 275-8000

Re: Lesko v. United States of America, Federal Circuit Case No. 23-1823
Letter re Notice of Supplemental Authority Per Fed. R. App. P. 28(j)

Dear Federal Circuit Court Clerk:

On behalf of Appellant Jillian Lesko in the matter of *Lesko v. United States*, Case No. 23-1823, scheduled for oral argument on October 9, 2024, I write pursuant to Fed. R. App. P. 28(j) to advise this Court of the decision by the United States Supreme Court in the matter of *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024), issued on June 28, 2024, after the appeal in the instant *Lesko* matter was fully briefed.

Appellant listed the pendency of the *Loper* case in the Statement of Related Cases sections of both her briefs. *See* Opening Brief at vii; Reply Brief at v. In *Loper*, the United States Supreme Court held that government agency regulations are not entitled to deference when a statute is ambiguous and that it is instead the role of the courts to resolve such statutory ambiguities, overruling *Chevron, USA, Inc. v. NRDC*, 467 U.S. 837 (1984).

Loper further bolsters Appellant's arguments here. At issue in this appeal, among other things, is Appellant's ability to seek overtime pay based on an inducement theory. *See* Opening Brief at 9-14; Reply Brief at 2-7. The relevant statute — 5 U.S.C. § 5542 — allows pay for overtime work when it is "officially ordered and approved." The Federal Circuit has held this statutory language permits an inducement theory of overtime. *See Mercier v. United States*, 786 F.3d 971, 982 (Fed. Cir. 2015); *see also Andersen v. United States*, 136 Ct. Cl. 365, 369-72 (1956). In this case, however, the court below held that an agency regulation, 5 C.F.R. § 550.111, which requires overtime to be authorized in writing, precludes Appellant's inducement theory. Appx005-006 (citing *Doe v. United States*, 372 F.3d 1347, 1362 (Fed. Cir. 2004), which relied on *Chevron* deference).

The *Loper* decision therefore further shows that, as already argued in Appellant's briefs, the courts' statutory interpretation of "officially ordered and approved" should control, that the statutory

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language should be construed to permit an inducement theory of overtime, and that the courts' statutory interpretation should not be overridden by a contrary regulation. *See* Opening Brief at 9-14; Reply Brief at 2-7.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dimitrios V. Korovilas'. The signature is fluid and cursive.

Dimitrios V. Korovilas, Esq.

CC: Kelly Geddes; Catherine M. Parnell; Michael S. Morrison; Jason M. Wucetich

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2024, I electronically filed the foregoing document described as follows with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel for all parties who have registered for receipt of documents filed in this matter.

**1. LETTER RE NOTICE OF SUPPLEMENTAL AUTHORITY PER
FED. R. APP. P. 28(j)**

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Dated: September 19, 2024

/s/ Dimitrios V. Korovilas

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